

Public Utility Commission of Texas

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Pat Wood, III
Chairman

Judy Walsh
Commissioner

Patricia A. Curran
Commissioner

September 17, 1998

Office of the Secretary
Federal Communications Commission
1919 M. Street NW, Room 222
Washington, D. C. 20554

Dear Secretary:

RE: CC Docket No. 96-128--Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

Enclosed is an original and fourteen copies of the Comments of the Public Utility Commission of Texas in the above referenced proceeding.

Thank you for your assistance.

Sincerely,

Bret Slocum
Director, Legal Division
Office of Regulatory Affairs

Enclosure

cc: International Transcription Service
Common Carrier Bureau--Enforcement Division

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

**Implementation of the
Pay Telephone Reclassification
and Compensation Provisions of the
Telecommunications Act of 1996**

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CC Docket No. 96-128

**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

Pat Wood, III, Chairman
Judy Walsh, Commissioner
Patricia A. Curran, Commissioner

September 18, 1998

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

**Implementation of the
Pay Telephone Reclassification
and Compensation Provisions of the
Telecommunications Act of 1996**

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CC Docket No. 96-128

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**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

The Public Utility Commission of Texas (PUCT) hereby files its report in the above-captioned proceeding for an evaluation on the need for a public interest payphone (PIP) program in Texas, as required by FCC Order 96-388 in CC Docket No. 96-128, released September 20, 1996.

BACKGROUND

Section 276(b)(2) of the Telecommunications Act of 1996 (the Act) directed the Federal Communications Commission (FCC) to “determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.”

To comply with its congressional mandate, the FCC issued *Report and Order*, CC Docket No. 96-128, FCC 96-388, on September 20, 1996. The FCC adopted the definition of a PIP as a

pay telephone which "(1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace." (§ 282).

Finding that states are generally in a better position to evaluate the need for PIPs, the FCC concluded in its *Report and Order* that primary responsibility for administering and funding of PIPs is best left to the states. (§§ 278, 280). Accordingly, the FCC required each state to determine whether any measures need to be taken to ensure the existence of PIPs. (§ 285). Discretion is left to each state as to how to fund its own PIP program, so long as the funding mechanism fairly and equitably distributes the costs of such a program and does not involve the use of subsidies prohibited by Section 276(b)(1) of the Act. (§ 283). A state may choose to fund PIPs from (1) its general revenues; (2) by requiring pay telephone service providers (PSPs) to provide PIPs as part of a voluntary, contractual agreement for the installation of competitive payphones on public property; or (3) by adopting PIP rules consistent with state responsibility for ensuring universal service pursuant to Section 254(f) of the Act. (§§ 283, 284). Each state must complete its review within two years of the date of issuance of this *Report and Order*--September 20, 1998. (§ 285).

WORKSHOP AND COMMENTS

On January 6, 1998, the PUCT gave notice of a workshop and request for comments in the PUCT's inquiry regarding PIPs, designated as Project Number 18150. The workshop was held on March 5, 1998. Nineteen participants attended, representing a total of twelve payphone service providers, associations, and state agencies

Separate meetings were held on April 9, 1998, with four affected state agencies, and on April 27, 1998, with Big Bend Telephone Company, per the payphone service provider's request.

On June 24, 1998, the PUCT issued a request for information whereby registered payphone providers in Texas were requested to provide certain information regarding their payphones, including the total number, the physical location of each, rates charged per local telephone call, and information relating to discontinued payphones.

The PSP respondents indicated that as of June 1, 1998, they supplied approximately 125,183 payphones in the state of Texas. For the six months preceding June 1, 1998, the PSP respondents reported that service was discontinued at approximately 7,466 payphones. This represents a disconnection rate of approximately six percent.

On August 20, 1998, the PUCT sent a follow-up question from the workshop to the participants. In response to the PUCT's question regarding the need for a PIP program, eight participants responded:

AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.--AT&T takes no position on whether the PUCT should establish a PIP program in Texas at this time.

CONSUMERS UNION & TEXAS LEGAL SERVICES CENTER--Consumers Union urged the PUCT to establish a PIP program because Texas has several geographically isolated areas and remains below the national average in terms of its percentage of households with basic telephone service.

GTE SOUTHWEST, INC.--GTE stated that establishing a PIP program at this time is premature. GTE commented that there is no evidence to date that a program is necessary. GTE recommended that the PUCT wait for the competitive marketplace to step forward to meet all

payphone needs. In addition, GTE said that the PUCT should establish an interim period, perhaps one year, to evaluate the need for PIPs.

OFFICE OF PUBLIC UTILITY COUNSEL--OPUC urged the PUCT to establish rules to create a PIP program. OPUC believes it is likely that competitive provisions of the Telecommunications Act of 1996, in combination with the elimination of subsidies, will no longer ensure that lower income persons have affordable access to telecommunications services. OPUC stated that a PIP program is needed to address competitive market failures, such as locational monopolies that result in monopoly pricing and rural areas with reduced levels of residential phone penetration.

SOUTHWESTERN BELL TELEPHONE COMPANY--SWBT stated that the PUCT should not establish a PIP program at this time. SWBT indicated that the marketplace has functioned well to provide payphones in cases where there is a need. SWBT maintained that the market should be given the continued opportunity to meet the payphone needs of the public. Until it can be determined that the need for a PIP program exists and the market has failed, SWBT recommends the PUCT forego establishing a PIP program. SWBT recommended that in the event of market failure, the PUCT should re-examine this issue.

SPRINT--Sprint stated that it cannot formulate an informed position regarding a PIP program at this time without an appropriate definition of "public interest" and a study by the PUCT.

TEXAS PAYPHONE ASSOCIATION--TPA stated that no need exists for promulgation of a PIP program at this time. According to TPA, virtually all requests for payphone service in Texas are currently being met. TPA purported that the only area in question is far West Texas, in

which Big Bend recently discontinued service. TPA maintained that private payphone providers have already substantially replaced these payphones. TPA stressed that the competitive marketplace must be allowed reasonable time to replace such discontinued service.

TEXAS TELEPHONE ASSOCIATION--TTA stated that the PUCT should establish a PIP program to ensure that payphones serving important public interests will continue to exist in Texas. TTA commented that there may be sites in remote public places, such as national or state parks or along a highway system, that may not attract sufficient revenue to cover total costs and would not be a viable location for a competitive payphone. Although such a site may not be attractive as the location of a competitive payphone due to its traffic patterns and costs, TTA stated that the site may meet the general public's strong expectation that a payphone is needed to meet public interest objectives in the areas of health, safety, and welfare. TTA suggested that in this case, the PUCT should work to ensure that a PIP is situated at the location.

CONCLUSION

The PUCT concludes there is insufficient information at this time to determine whether a PIP program is necessary in Texas. Payphones were reclassified as non-regulated by the FCC in 1997. Any need to disconnect payphones as a result of payphone service providers' inability to recover costs because of the elimination of subsidies, pursuant to Section 276 of the Act, is still being determined by the providers. Although providers reported that service at six percent of the payphones in Texas was discontinued during the six-month period preceding June 1, 1998, the total number of payphones which have already been replaced by the competitive market are not yet accounted for. For example, at least one payphone provider did report disconnecting all its payphones; however, almost half of those payphones have already been, or are now being,

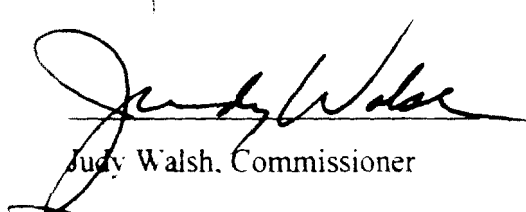

replaced by other payphone providers. Institution of a PIP program at this time would be premature.

We agree with those participants who stated that there may be isolated locations in Texas that warrant a PIP to compensate for low residential phone penetration or insufficient usage to recover the cost of payphone service. The PUCT will continue to monitor how the competitive payphone marketplace responds to restructuring and deregulation and whether some of these public interest locations are served by competitive payphone providers.

The PUCT's enabling legislation, the Public Utility Regulatory Act of 1995, does not explicitly address the provisioning and funding of public interest payphone service. If evidence arises indicating underserved areas in Texas that could benefit from a PIP program, the PUCT will seek the necessary authority from the state legislature.

Respectfully submitted,

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Judy Walsh, Commissioner
Patricia Curran, Commissioner